

IN THE HIGH COURT OF DELHI

Crl.M.C. No.2207/2004

Rama Beri & Anr. Petitioners
! through: Mr.R.N.Mittal, Senior Advocate with
Mr.Puneet Mittal and
Mr.Pawan Kumar Mittal
with petitioner No.2 in person.

VERSUS

\$ State Respondent
^ through : Mr.Ashok Arora for the complainant
with complainant in person.

% DATE OF DECISION: 12.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Prayer made in the petition is as under:-

'(a) delete/modify the observations made in the order dated 21.08.2004, reproduced herein below and the same may be treated as non-est in the eyes of law;

“During reconciliation proceedings, it was stated by the husband that he was willing to pay Rs.10,000/- p.m. for the bringing up and schooling of both children. He was also prepared to pay maintenance of the equal amount to the wife. He stated that he had

already deposited Rs.1 lakh each in the name of children by way of FDR and he would further make fixed deposit of Rs.4 lacs each in the name of his children. He has also agreed to pay a sum of Rs.10 lacs to the wife, without prejudice to the rights and claims of istridhan and dowry articles etc. which shall be subject to adjudication by the Court of competent jurisdiction. Wife has also agreed that husband would be at liberty to meet the children whenever he comes to Delhi and desires to meet them. He may take the children on the last weekend of the month to Dehradun and leave them back to her on the next working day. Whenever, there are long vacations of the children, husband may take the children with him to Dehradun for a period of 2 weeks during summer vacations and for one week during winter vacations. Husband and wife both have volunteered to above arrangements."

2. The said observations are a part of an order passed by the learned Additional Sessions Judge, Delhi granting anticipatory bail in FIR No.263/04 under Section 498-A/406/34 IPC PS K.M.Pur to the petitioner.

3. At the outset it may be noted that the stated voluntary arrangement noted in the paragraphs in the order dated 21.8.2004, deletion whereof has been prayed for, is not a condition of the anticipatory bail granted to the petitioner.

4. It may further be noted that for non-compliance of the stated voluntary arrangement as reproduced in the order dated 21.8.2004, the complainant (wife) filed an application for

cancellation of the bail granted to the petitioner. The said request of hers was declined. Application filed by her was dismissed. Thus, for all practical purposes, petitioner stands freed from the rigours of the observations, deletion whereof has been prayed for from the order dated 21.8.2004.

5. However, learned senior counsel for the petitioner urges that the observations are coming in the way of the petitioner in other proceedings initiated by the wife against the petitioner. It is urged that the wife is using the said observations to urge that they reflect a settlement between the parties before the learned Additional Sessions Judge, Delhi.

6. Opposing the prayer made in the petition, learned counsel for the respondent states that the observations in the order dated 21.8.2004 are in fact a consent agreement between the parties and indeed, learned Judge has recorded in the concluding sentence of the paragraph that the husband and the wife have both volunteered to the above arrangement. Counsel urges that if petitioner had any grievance pertaining to the factual observations made by the learned Additional Sessions Judge, petitioner ought to have filed an application before the learned Additional Sessions Judge.

7. Learned counsel further submits that as recorded by

the learned Additional Sessions Judge in the order dated 21.8.2004, chamber hearings were held to try and effect a reconciliation. Attempts were made to find some amicable settlement. Counsel urges that what has been recorded in the order dated 21.8.2004, deletion whereof is sought, is nothing but the agreed settlement between the parties.

8. In the rejoinder, learned counsel for the petitioner points out that as pleaded in the petition, the terms which have been recorded as a part of the settlement were proposed by the petitioner provided the complainant agreed to a divorce by mutual consent. Counsel states that it was improper on the part of the learned Additional Sessions Judge to have recorded what transpired during reconciliation proceedings as if the same reflected a voluntary agreement between the parties.

9. Having considered the rival submissions, it may be noted that in the decision dated 23.8.2007 in CrI.M.C. No.3920/2003 titled 'Anupam Sharma vs. NCT of Delhi & Anr.' this Court had an opportunity to consider whether Courts while deciding applications for anticipatory bail or bail by the in-laws in a complaint filed by a estranged wife should or should not encourage settlement. The view taken was that dispute being essentially a matrimonial dispute, every attempt has to be made

to try and find an agreed solution so that multifarious litigations between the parties is avoided.

10. To that extent, the attempt by the learned Additional Sessions Judge to find an amicable solution to the problem is a laudable step.

11. However, care has to be taken not to record what transpired during chamber hearings until and unless a clear consent emerges. Further, if clear consent emerges, the same has to be expressed with clarity in the order, lest the order becomes a fertile ground for further litigation.

12. In the order dated 21.8.2004 in the paragraph immediate prior to the paragraph in question, exemption whereof has been prayed for, learned Additional Sessions Judge has himself recorded as under:-

“From the reconciliation proceedings held by the court in the chamber, it appears that parties are not in a mood to patch up their differences and live together. Husband has his own conditions for wife and wife has her own apprehensions about her welfare and welfare of her children. Both parties belong to wealthy and fortune families and have spent lavishly on the marriage, reception, honeymoon etc. Husband family owns properties in Dehradun and other places. Wife's parents are also rich persons. Both parties have engaged reputed Advocates for their cases.”

13. It is thus apparent that the learned Additional Sessions

Judge has himself recorded that the chamber hearings attempted at arriving an amicable settlement did not fructify.

14. In that view of the matter, prima facie, learned Additional Sessions Judge should not have recorded what transpired during reconciliation proceedings much less as a voluntary arrangement between the parties.

15. Needless to state, a voluntary arrangement has to have definite and well-defined contours evidencing that parties have agreed to bury the hatchet on said agreed terms being complied with.

16. In this context, it becomes relevant that the learned Additional Sessions Judge has himself consciously not made as a condition of bail the so-called voluntary arrangement between the parties.

17. Since the contours of the so-called arrangement are neither well-defined nor crystallized and a formal resolution of the dispute did not take place between the parties before the learned Additional Sessions Judge and since the stated consent terms have not been made a condition of the bail granted to the petitioner, the instant petition needs to be disposed of with declaratory observation that nothing stated in the order dated 21.8.2004 passed by the learned Additional Sessions Judge, Delhi

would be construed as an agreement between the parties for the reason the order itself reveals that an inchoate settlement took place.

18. The petition is accordingly disposed of declaring that nothing recorded by the learned Additional Sessions Judge in the order dated 21.8.2004 shall be construed in any proceedings as evidencing an agreed settlement between the parties.

19. No costs.

October 12, 2007
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PRADEEP NANDRAJOG, J.